

CITY OF TIGARD
ORDINANCE NO. 04-13

AN ORDINANCE AMENDING ORDINANCE 04-12 PROVIDING A PROCESS FOR CONSIDERATION OF CLAIMS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE, AND DECLARING AN EMERGENCY.

WHEREAS, on November 23, 2004, the City Council adopted Ordinance No. 04-02 without incorporating the written Exhibit A that had been distributed and directed that a revised Exhibit A be prepared to include specific changes; and

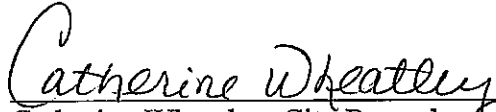
WHEREAS, a revised Exhibit A has been prepared that includes the changes requested by the Council; now, therefore;

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

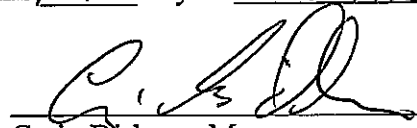
SECTION 1: Ordinance 04-12 is hereby amended by adding an Exhibit A to that ordinance in the form of the attached Exhibit A. The Tigard Municipal Code is consequently amended as provided in Ordinance 04-12 and Exhibit A.

SECTION 2: Because this ordinance is necessary for the preservation of the health, safety and welfare of the City, an emergency is declared to exist and this ordinance shall be in full force and effect immediately on passage.

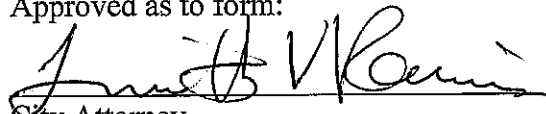
PASSED: By majority vote of all Council members present after being read by number and title only, this 14th day of December, 2004.


Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 14th day of December, 2004.


Craig Dirksen, Mayor

Approved as to form:


City Attorney

12.14.04

EXHIBIT A
TO CITY OF TIGARD ORDINANCE NO. 04.13

PROVIDING A PROCESS FOR CONSIDERATION OF CLAIMS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, INCLUDING A PROVISION FOR ACTION BY NEIGHBORING PROPERTY OWNERS, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE.

Chapter 1.20 Compensation for Reduction in Property Value

1.20.010 Purpose

The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

“Affected property” means the private real property that is alleged to have suffered a reduction in fair market value as result of the City’s regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.

“Claimant” means the property owner who submits a claim for compensation under Measure 37 in accordance with Section 1.20.030.

"Decision Maker" means the City Council or any person, board, commission, or other entity to whom the Council has delegated authority to make decisions on Measure 37 claims.

“Regulation” shall mean a provision of the City’s comprehensive plan, Community Development Code and transportation ordinances.

“Restricts the use of property” means prohibiting a particular use of the property or making that use only permissible under certain conditions. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

“Manager” means City Manager or designee.

1.20.030 Claims

A. A property owner wishing to make a claim against the City under Measure 37 shall first submit a written claim to the City. A claim under Measure must be in writing and include:

1. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.
2. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.
3. A list of all persons with an ownership interest in or a lien on the property.
4. Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.
5. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.
6. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.
7. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

1.20.040 Notice

The City shall provide notice of the hearing required by Section 1.20.070 to all owners of the property, lien holders and security interest holders, record owners of property within 500 feet of the property, recognized community participation organizations for the area the property is located, and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim or statement describing the extent to which the regulations would need to be waived or suspended, the City contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

1.20.050 Staff Report

City staff shall prepare a report analyzing the claim. The staff report may be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the Decision Maker.

The staff report shall be submitted to the Decision Maker, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by Section 1.20.070.

1.20.060 Decision Maker Proceedings

The Decision Maker shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of submission of the claim but may be set at any time. The Decision Maker may hold an executive session on the claim at any time.

1.20.070 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The Decision Maker may limit the duration of testimony.

1.20.080 Decision Maker Decision

In deciding the claim, the Decision Maker may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:
 - a. The regulation does not restrict the use of the private real property,
 - b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.
 - c. The claim was not timely filed.
 - d. The Claimant is not the current property owner.
 - e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.
 - f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.
 - g. The regulation is required by federal law.
 - h. The regulation protects public health and safety.
 - i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

- j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.
 - k. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through g. The basis for this finding must be clearly explained.
 - l. The City has not established a fund for payment of claims under Measure 37.
2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.
 3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.
 4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.
 5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.

A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

1.20.090 Delegation of Authority and City Council Review

The Council may delegate authority to act as a Decision Maker to any person, board, commission or other entity by motion, resolution or ordinance. The Council shall review all recommendations of the Decision Maker and make the final decision. If a Decision Maker other than Council has made a recommendation to Council, Council may act on the recommendation by motion or order without a Council hearing. The Council may approve recommendations on its consent agenda.

1.20.100 Action by Neighboring Property Owners

If a Claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction. The nearby property owners, if successful, shall be entitled to an award of reasonable attorney fees. This section does not create a right of action against the City.

1.20.110 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.080, including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code or the Community Development Code. The City may retain an appraiser to assist the Decision Maker or Council determination.

1.20.120 Deposit and Responsibility for Costs

The Claimant shall provide a deposit of \$1,000 at the time the claim is filed with the City. If the claim is determined to be valid, the City shall refund the entire deposit. If a claim is denied and ultimately determined to be invalid, the Claimant shall reimburse the City for the costs the City incurred in processing the claim. If the amount of reimbursement exceeds the cost of deposit, the Claimant shall pay any additional amounts within 30 days of a demand by the City for full reimbursement. If the amount of reimbursement is less than the deposit, the City shall refund the difference to the Claimant. The City shall provide an invoice detailing its costs when demanding additional reimbursement or providing a partial refund.

1.20.130 Severability

If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.